

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:05cv338**

**DARRELL WAYNE BUCHANAN; and)
LOLA C. BUCHANAN,)**

Plaintiffs,)

Vs.)

ORDER

**AVERY COUNTY; AVERY COUNTY)
SHERIFF'S DEPARTMENT; and)
EDDIE HUGHES,)**

Defendants.)

THIS MATTER is before the court on defendants' Motion to Dismiss for Plaintiffs' failure to Comply with the Federal Rules of Civil Procedure; or, Alternatively, Motion to Compel Plaintiff Darrell Wayne Buchanan's Attendance at a Deposition and for recovery of Attorney Fees and Costs Pursuant to Rule 37(d) F.R.C.P. On June 21, 2006, after entry of the previous Order, counsel for defendants informed the court that plaintiffs had fully complied and all depositions had been taken. Based on such representations, the court will strike the previous Order and deny the motions in their entirety and cancel all hearings and other requirements.

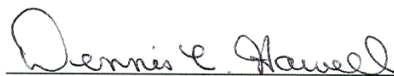
Respective counsel are advised that this court takes its job seriously, that federal civil litigation is not child's play, and that counsel owe it to the public as well as their clients to not only respond to motions, but to advise the court when a motion no longer has a basis in fact. Here, a number of hours were expended by court personnel in reviewing the motion, writing the Order, and setting this matter for

hearing, all funded by a limited court budget. Such expense could have been avoided by electronically filing either a Motion to Withdraw the instant motion or a notice of withdrawal. This court can only rule on what is in front of it. The undersigned apologizes to Mr. Triggs.

ORDER

IT IS, THEREFORE, ORDERED that the previous Order of this court is **STRICKEN**, the hearing therein set is **CANCELLED**, and defendants' Motion to Dismiss for Plaintiffs' failure to Comply with the Federal Rules of Civil Procedure is **DENIED** with prejudice and the alternative Motion to Compel Plaintiff Darrell Wayne Buchanan's Attendance at a Deposition and for Recovery of Attorney Fees and Costs Pursuant to Rule 37(d) F.R.C.P. is **DENIED** with prejudice (#9).

Signed: June 22, 2006

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Dennis L. Howell
United States Magistrate Judge

